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Attorneys for Defendants
 HANDLER, THAYER & DUGGAN, LLC and
 THOMAS J. HANDLER, J.D., P.C. (erroneously sued
 herein as THOMAS J. HANDLER, individually)

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

GREGORY R. RAIFMAN, individually and as)
 Trustee of the RAIFMAN FAMILY REVOCABLE)
 TRUST DATED 7/2/03; SUSAN RAIFMAN,)
 individually and as Trustee of the RAIFMAN)
 FAMILY REVOCABLE TRUST DATED 7/2/03;)
 and GEKKO HOLDINGS, LLC, an Alaskan limited)
 liability company, dba GEKKO BREEDING AND)
 RACING,)

Plaintiffs,

vs.

CLASSICSTAR, LLC, a Utah limited liability)
 company; CLASSICSTAR FARMS, LLC, a)
 Kentucky limited liability company; BUFFALO)
 RANCH, a business entity form unknown;)
 GEOSTAR CORPORATION, a Delaware)
 corporation; S. DAVID PLUMMER; SPENCER D.)
 PLUMMER, III; TONY FERGUSON; THOMAS)
 ROBINSON/ JOHN PARROT; HANDLER,)
 THAYER & DUGGAN, LLC, an Illinois limited)
 liability company; THOMAS J. HANDLER;)
 KARREN, HENDRIX, STAGG, ALLEN &)
 COMPANY, P.C., a Utah professional corporation,)
 f/k/a/ KARREN, HENDRIX &)
 ASSOCIATES, P.C., a Utah professional)
 corporation; TERRY L. GREEN; and DOES)
 1-1000, inclusive,)

Defendants.

No. C07-2552 EDL

DECLARATION OF JOHN M.
 DRATH IN SUPPORT OF
 MOTION TO SET ASIDE
 DEFAULT

DATE : 08/28/07
 TIME : 9:30 a.m.
 COURTROOM : 11

1 I, JOHN M. DRATH, declare and state as follows:

2 1. I am an attorney at law duly authorized to practice before all in the State of
3 California, and in the United States District Court for the Northern District of California.

4 2. On June 1, 2007, I was contacted by Mr. Scott Stains of Great American
5 Insurance Company by email and asked if I would have any conflict in representing their insured
6 THOMAS J. HANDLER and HANDLER, THAYER & DUGGAN, LLC in litigation pending in this
7 Court. As I was scheduled to start a jury trial on June 4 in San Francisco Superior Court on June 4,
8 I forwarded the email to my paralegal Roberta Beach to check for conflicts and any deadlines and
9 to get back to the insurance company if we had no conflicts.

10 3. On June 4, 2007 I began trial in the matter of *Housley v. California Highway*
11 *Patrol*, San Francisco Superior Court No. 04-428975 before Judge Ernest Goldsmith in
12 Department 613. I was absorbed in the prosecution of that action throughout the following weeks
13 until closing arguments were concluded on July 10. On July 11, I came into my office before going
14 to court and saw that a file had been opened on this matter on July 9, which is the same day we
15 received the engagement letter from the insurance company dated July 5, 2007. I put the file in my
16 briefcase and began reviewing it while the jury was deliberating on July 11. I also called Mr.
17 Handler that afternoon to introduce myself and get some background on the case.

18 4. Between the email of June 1 and seeing the file on my desk on the morning
19 of July 11, the only communication I received was a July 4 email from Mr. Stains regarding another
20 matter he was referring to my office and, in that email, he indicated that he would be sending me a
21 formal engagement letter in this matter on July 5, which he did. A copy of the complaint (and
22 nothing more) accompanied the letter, and according to our file stamp it was received in our office
23 on July 9. In none of these three communications is there any reference to service of the complaint.

24 5. The jury returned its verdict late in the day on July 11, and I spent July 12
25 going through correspondence and new matters on my desk. Late in the afternoon, I went online to
26 see what deadlines were in place in this matter, and discovered that a default had been entered the
27 previous day.

28 6. I have spoken to the paralegal, Roberta C. Beach, and her declaration is

1 submitted herewith. She was not aware that service had been effected, and was awaiting receipt of
2 the file from the insurance company before setting up the file for me.

3 7. Since learning of the default I contacted Mr. Stains and had him send me
4 everything that Mr. Handler had sent to him and which had been served on Mr. Handler, and
5 included in those materials was the copy of the summons. It is attached to the declaration of Mr.
6 Handler, and there is no indication on that document as to either the date or method of service.

7 8. On July 13, 2007 I wrote to plaintiff's counsel, Richard Idell, advising him
8 of my representation, the general circumstances explaining the failure to get a timely pleading on
9 file, and my intention to get a motion to set aside the default on file the following week. A copy of
10 my letter is attached hereto marked Exhibit A.

11 9. I have handled many cases for the Professional Liability Division of Great
12 American Insurance Company, and in my experience the claims representative invariably lets us
13 know at the time of initial contact and in the transmittal letter if and when service has been effected.
14 This is also true of the other professional liability insurers who have retained our services over the
15 years.

16 I declare under penalty of perjury that the foregoing is true and correct. Executed this
17 21st day of July, 2007 at Oakland, California.

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20 JOHN M. DRATH

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JOHN M. DRATH
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July 13, 2007

VIA FACSIMILE

Richard J. Idell
IDELL & SEITEL, LLP
465 California Street
San Francisco, CA 94104

Re: *Raifman v. Classicstar, LLC, et al.*
USDC NC No. C 07 2552 MJJ
Our File No. 75-3048

Dear Mr. Idell:

Please be advised that I was contacted by Great American Insurance Company in early June to represent Thomas J. Handler and the Handler, Thayer & Duggan firm in this litigation. Although my client promptly notified the carrier that they had received the complaint, the carrier misunderstood and thought the complaint had simply been mailed to Mr. Handler. I was in a lengthy jury trial at the time which just concluded on July 11, and I did not learn that service had been effected and a default entered until I went on line late yesterday and discovered that fact. I am in the process of preparing a motion to set aside the default, and it will be filed next week. I am hopeful that you will not oppose it given the circumstances.

In the meantime, if there is anything pending other than what is reflected in the court's file, I would appreciate being kept in the loop. Thank you for your cooperation.

Very truly yours,

DRATH, CLIFFORD,
MURPHY & HAGEN, LLP


JOHN M. DRATH

JMD/rcb

cc: Thomas J. Handler

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EXHIBIT A